A.F.R.

IN THE HIGH COURT OF JUDICATURE : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ.

WRIT PETITION NO.6293 OF 2005

PETITIONER Sudama Chandra, aged about 30 years, S/o Late Vedram Chandra, R/o Pitampura, New Delhi, Presently residing at – Purani Basti, Raipur, Tahsil & District Raipur (C.G.)

Versus

RESPONDENTS

1. The State of Chhattisgarh, Through Principal Secretary, Department of General Administration, D.K.S. Bhavan Raipur (C.G.)
2. Board of Revenue Bench at Raipur (C.G.)
3. Additional Collector, Raipur (C.G.)
4. Sub-Divisional Officer Revenue, Raipur (C.G.)
5. Tahsildar, Raipur (C.G.
6. Bhed Kumar Baghmar, S/o Shri Rameshwar Prasad, R/o Shankar Nagar, Raipur, Tahsil and District – Raipur (C.G.)
7. Makhan, S/o Late Shri Bhauram Dhiwar
8. Kusum, D/o Late Shri Bhauram Dhiwar
9. Kunti, D/o Late Shri Bhauram Dhiwar
10. Shakuntala, D/o Late Shri Bhauram Dhiwar
11. Usha Bai, D/o Late Shri Bhauram Dhiwar

Respondent No. 7 to 11 all resident of Amapara, Raipur (C.G.)

Present : Mr. Raghvendra Pradhan, learned counsel for the petitioner.

Mr. N.K. Agrawal, learned Dy. A.G., with Mr. Utkarsh Verma, learned Dy. Govt. Advocate, for the State.

ORAL ORDER
(Passed on 14th December, 2005)

This Writ Petition filed under Article 226/227 of Constitution of India is directed against the order dated 22.11.2005, passed by the Additional Collector, Raipur in Second Appeal Case No.13/A/6/2005-06 setting aside the order of Sub Divisional Officer (Revenue), Raipur dated 05.11.2004 and directing to enter the name of sixth respondent herein in the revenue records in respect of the property bearing Khasra No.154 /4, Area 0.200 hectare situated at P.C. No.104, R.I. Circle Raipur, Tahsil and District Raipur (C.G.) (hereinafter shortly referred to as 'the Schedule land').

(2) This writ petition arises out of mutation proceedings initiated by the statutory authority under the Chhattisgarh Land Revenue Court, 1959 (for short the 'Code).

(3) The facts of the case, in brief, are as follows:- According to the petitioner, the schedule land was earlier purchased from original owner - respondent 7 to 11, by a registered sale-deed dated 27.04.2004 marked as Annexure-P/3. After the purchase, in pursuance of, an intimation filed by petitioner, the name of the petitioner was mutated in the revenue records by the Tahsildar as per Annexure-P/4. When the matter stood thus, the sixth respondent filed an intimation before the Tahsildar stating that he has purchased the schedule land from respondents 7 to 11 and therefore, his name be mutated in the revenue records. On receipt of the said intimation, the Tahsildar issued notice to the petitioner herein but he did not appear before the Tahsildar. The Tahsildar, however, rejected the application of the sixth respondent to mutate his name in the revenue records by his order dated 27.09.2004. Being aggrieved by the said order of Tahsildar, the petitioner herein preferred first appeal being revenue

appeal case no.27/A-6/2004-2005 to the Sub Divisional Officer (Revenue), Raipur. The Sub Divisional Officer (Revenue), Raipur by his order dated 05.11.2004, allowed the appeal preferred by sixth respondent. Being aggrieved by the said order, the petitioner herein preferred revision before the Board of Revenue which was subsequently transferred to Additional Collector, Raipur and by virtue of a change in law and the same was treated as Second Appeal No.13/A/6/2005-2006. The Additional Collector dismissed that appeal by order dated 22.11.2005. Hence, this writ petition under Articles 226 and 227 of Constitution of India.

(4) I have heard learned counsel for the petitioner and perused the material papers appended to the writ petition. It was strenuously contended by the learned counsel for the petitioner that the Tahsildar committed an apparent irregularity in entertaining the application of the sixth respondent and that application was not at all maintainable by virtue of provisions of Rule 32 of the Rules regarding records of rights (for short the 'Rules). It was also contended that if the sixth respondent is aggrieved by the entry made by the Tahsildar in the name of petitioner, he ought to have filed a suit before the jurisdictional civil Court and sought remedies. It was also contended that mutating the name of the sixth respondent in the revenue records without setting aside the entry made in the name of the petitioner in pursuance of intimations filed by him would not arise and admittedly, the sixth respondent did not file any application to set aside the entry made in the name of the petitioner in the revenue records.

(5) Having heard learned counsel for the parties, I do not find any merits in any of these contentions. The provisions of Sections 109

and 110 of Code are relevant for decision-making and they read as follows:

> "**109. Acquisition of rights to be reported.**- (1) Any person lawfully acquiring any right or interest in land shall report orally or in writing his acquisition of such right to the Patwari within six months from the date of such acquisition, and the Patwari shall at once give a written acknowledgement for such report to the person making it in the prescribed form:
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> Provided that when the person acquiring the right is a minor or is otherwise disqualified, his guardian or other person having charge of his property shall make the report to the Patwari.
>
> **110. Mutation of acquisition of right in Filed Book and other relevant land records.-** (1) The Patwari shall enter into a register prescribed for the purpose every acquisition of right reported to him under section 109 or which comes to his notice from intimation from Gram Panchayat or any other source.
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> (2) The Patwari shall intimate all the reports regarding acquisition of right received by him under sub-section (1) to the Tahsildar within thirty days of the receipt thereof by him.
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> (3) On receipt of the intimation from Patwari under sib-section (2), the Tahsildar shall have it published in the village in the prescribe manner and shall also give written intimation thereof to all person appearing to him to be interested in the mutation and also to such other person and authorities as may be prescribed.
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> (4) The Tahsildar shall after affording reasonable opportunity of being heard to the persons interested and after making such further enquiry, as he may

deem necessary, make necessary entry in the Field Book and other relevant land records.

Section 109 of the Code in unmistakable term provides that any person acquiring any right or interest in land can make an application to the jurisdictional Patwari. Section 110 of Code requires the Patwari to enter into a register prescribed for the purpose of acquisition of right reported to him under Section 109 of the Code or which comes to his notice from intimation from Gram Panchayat or any other source and to intimate all the reports regarding acquisition of rights received by him under Sub-section (1) to the jurisdictional Tahsildar within thirty days of the receipt thereof by him. Sub-section (3) of Section 110 requires the Tahsildar that on receipt of the intimation from Patwari to publish in the village in the prescribed manner and to give written intimation to all persons having interest in the subject land. Sub-section (4) of Section 110 empowers the Tahsildar to pass appropriate order after affording reasonable opportunity of being heard to all the persons interested in the land. Since it is the case of sixth respondent that he had acquired title and interest in the schedule land by purchasing the same under a registered sale-deed from respondents 7 to 11, it cannot be said that he is not entitled to make an application under Section 109 of the Code for mutating his name in the revenue records nor could it be said that the Tahsildar lacks jurisdiction to entertain such application and pass appropriate order after giving notice to all persons interested in the land and after giving them reasonable opportunity of being heard. However, it is the contention of the learned counsel for the petitioner that as on the date the sixth respondent made application to Patwari under section 109 of the Code, since the names of his vendors (respondents 7 to 11) were not recorded in the revenue

records, by virtue of Rule 32 of the Rules, the application filed by the sixth respondent is not maintainable. The contention of the learned counsel is not well-founded for more than one reason.

(6) Rule 32 of the Rules Regarding Record of Rights published vide Notification No.2498–VII–N – dated 10th June 1965 (for short "Rules") reads as follows :

> **"32.** Disputes shall be decided summarily by the Tahsildar on the basis of title and not possession. Any transfer by a person whose name is not recorded in the Khasra shall not be admitted in mutation by the Tahsildar. The order shall contain the names of the parties and witnesses and a brief summary of the evidence produced by either side together with the Tahsildar findings thereon. "

(7) In the first place, it needs to be noticed that the provisions of Rule 32 cannot control the substantive provisions of Sections 109 and 110 of the Code nor have the effect of taking away the right of a person acquiring any right or interest in land to seek mutation of entries in the records. In other words, a right given by the provisions of Sections 109 and 110 of the Code to a person acquiring any right or interest in land to seek mutation of the entries cannot be taken away by Rule 32 which is a piece of delegated legislation. As pointed out supra, Section 109 permits reporting of acquisition of interest and right in the land and Section 110 obliges the Tahsildar to entertain such application and pass appropriate order. In the context of the provisions of Sections 109 and 110 of Code, if we interpret the provisions of Rule 32 of the Rules reasonably and in order to advance the objective of the substantive provisions of the Sections 109 and 110 of the Code, it could not be said that simply because as on the date the 6th respondent made an application for mutation of his name in

the records as provided under Sections 109 and 110 of the Code, the names of his vendors, namely, respondents 7 to 11, were not recorded in the Khasra, the application is not maintainable. If Court were to accept the interpretation suggested by the learned counsel for petitioner, that will not be in consonance with clear, plain, unambiguous language employed by the Legislature in sub-Section (4) of Section 110 of the Code and in that event it would limit the power of Tahsildar to mutate entries in the name of a person acquiring any right or interest in the land who makes an application envisaged in sub-Section (1) of Section 109 of the Act. Neither the provisions of sub-Section (4) of Section 110 nor any other provision of Section 109 or Section 110 would mandate that the Tahsildar can mutate the entries in the name of the applicant acquiring right or interest in the land only if the name / names of the vendor/ vendors of the applicant is/are recorded in Khasra on the date of the application. In other words, if the Court were to accept the interpretation suggested by the learned counsel for the petitioner that will render substantive provisions of Sections 109 and 110 of the Code nugatory and otiose as regards person like the sixth respondent and that in view of the settled principles governing statutory interpretation, such an interpretation cannot be placed. Therefore, I hold that the application filed by the sixth respondent under sub-Section (1) of Section 109 of the Code for mutating entries in the records and to enter his name in the records is maintainable and the Tahsildar has rightly entertained the said application.

(8) This takes me to the merit of the matter. Before the Tahsildar, respondent No.9 on behalf of the vendors appeared and gave his evidence. In his deposition, he stated that well before the petitioner herein purchased the schedule land from respondents 7 to 11 through

their Power of Attorney, namely, one Hridaylal, the power of Attorney executed by them in favour of the said Hridaylal was cancelled and therefore, on the date of the execution of the sale-deed, Hridaylal had no legal authority to convey the schedule land and therefore, conveyance made bi him is ex-facie invalid and void. Although the petitioner was served with notice in the proceedings initiated before the Tahsildar, he did not appear before him. Furthermore, even in the appeal preferred to Sub Divisional Officer (Revenue), Raipur the above specific plea of the ninth respondent is not seriously contested. In that view of the matter, for the limited purpose of entering the name of the sixth respondent in the revenue records by a way of mutation, it cannot be said that the Sub Divisional Officer (Revenue), Raipur has committed any manifest irregularity or illegality. There is no need for this Court to dilate on this aspect further on merit of the matter for the simple reason that it is well settled that the rights of parties relating to title, possession etc., could be decided finally and conclusively only by a jurisdictional civil Court in a properly instituted suit. Therefore, the contentions raised by the parties in their respective pleadings touching title, possession of the schedule land are left open to be agitated before the jurisdictional civil Court. It is open for the petitioner to work out his legal remedies by instituting a suit before the jurisdictional civil Court. The writ petition is dismissed subject to the above observations. If a suit is instituted by the petitioner herein before the jurisdictional civil Court for remedies, such Court shall decide that suit on its own merit without being influenced in any way by any of the observations made by this Court in this order.

Sd/-
Chief Justice

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